

MINUTES
Texas Board of Health Meeting
August 7, 2003

The August 7, 2003, meeting of the Texas Board of Health (Board) was called to order at 10:07 a.m., at the Texas Department of Health (department), 1100 West 49th Street, Room M-739, Austin, Texas. Mr. George H. McCleskey, Chair, presided. A quorum was present with members, Raymond Hannigan, Margo Scholin, B.S.N., M.S., J.D and Mario R. Anzaldua, M.D., in attendance.

Registered Guests

Steve DeCorte, AIDS Coalition of Texas Now
Tracy Wilson, AIDS Coalition of Texas Now
Sterling Mullins, AIDS Coalition of Texas Now
Debra Goodie, AIDS Coalition of Texas Now
Ricky Martin, AIDS Coalition of Texas Now
William Gholsonia, AIDS Coalition of Texas Now
Phil Potter, AIDS Coalition of Texas Now at Beaumont
Isaac Henry, ASD and AIDS Coalition of Texas Now at Dallas
Thomas R. Brinson, Dallas Restore Center
Pamela Curry, AIDS Coalition of Texas Now of Central Texas
Rosario Lopez, AIDS Coalition of Texas Now at San Antonio
Ray Moore, AIDS Coalition of Texas Now at Fort Worth
Joyce Waters, AIDS Coalition of Texas Now at Beaumont, Triangle Aids Network
Ruth Peyton, AIDS Coalition of Texas Now at San Antonio
Larry Diaz, AIDS Coalition of Texas Now at San Antonio
Carlos Hernandez, AIDS Coalition of Texas Now
David Carlton, AIDS Coalition of Texas Now
Mary Ellen Featherstone, AIDS Coalition of Texas Now
Thomas F. Sheffield
Randall Lamberson, AIDS Coalition of Texas Now
Maurice Evans, AIDS Coalition of Texas Now
Tony Graves, AIDS Coalition of Texas Now
Roger Culberson, AIDS Coalition of Texas Now
Bruce Adams, AIDS Coalition of Texas Now at El Paso
Linda Wilson, AIDS Coalition of Texas Now
William Griffin, AIDS Coalition of Texas Now
Lorenzo Sias, Jr.
Robin Chandler, Representative Eddie Rodriguez's Office
Natalie N. Vauch, Thomas Street Clinic
Luis Contreras, Houston
Terry Ross, Thomas Street Clinic
Johnny Deal, Houston
Stan McDonald, Houston
Glen Maxy, Austin, Texas
Andrea Sloan, HIV Planning Council
Terrance Shelvin
Linus Ballard
Opal Kelley
Claude Baker
Doretha Arthur, Houston
Gino
Edward M.
Latonya Simon
Kevin Durst

Registered Guests (Continued)

Christopher Boulden, Houston
Eddie Williams, Houston
Robert Belcher, Houston
Kathy Harper, DWA Thomas
Trinisha Hightower, Humble
Bill Lambright, Galveston
Tom Cassady, Fort Worth
Alfredo Diaz
Liliana Chaez
Ronald C. Hutchison, Jr., Beaumont
Lady Hogan, Fort Worth
Ricky Vick, Fort Worth
Derrick Geter, Dallas
Tanya McCormack, Dallas
Victor, Dallas
Dina Ouarte, Dallas
Ernen Chalmers, Dallas
Robert Seekers, Fort Worth
Veronica Estrada, Dallas
Maria Garcia
Albert Cortez, Dallas
Mansour El-Amin
Bruce Hill, Dallas
Mary W. Allen, Richland Hills
Domingo Jimenez, Jr., Dallas
Mitch, Dallas
David Newman, Irving
Gregory Cox
Charlie Moore
Cathy Hodges, Dallas
Diane Harris, Fort Worth
Casey Rashaw, Fort Worth
Lynette Varnado, Fort Worth
Susan Peteete, New Braunfels
Ruth Mueller, San Antonio
Douglas Ford, Fort Worth
James B. Oliver, AIDS Coalition of Texas Now at San Antonio
Terrence C. Dut, Fort Worth
Jode L., San Antonio
Randy Foster, AIDS Coalition of Texas Now at Beaumont
Terrence Hewitt, AIDS Coalition of Texas Now at San Antonio
Leroy Braxton, Dallas
Carlos Garcia, Dallas
Ron Seely, Fort Worth
Linda Freeman, Dallas
John Corpus, AIDS Coalition of Texas Now at Fort Worth
Maria L. Allen
Carlos S. Cacerio, Dallas
LaQuinta Garcia

Registered Guests (Continued)

Sean Harper, AIDS Coalition of Texas Now at Dallas
Fernando Valadez
Emma J. Ivy, Dallas
Isabod Rico
Angel Garcia
William Allen
Gabrial Marquez
Steve Riegel, Forth Worth
Shamekia Mongrum
Michael Y. Wilson
Laura Mattoos, Pueblo, Colorado
Michael Brooks, Forth Worth
Carol Sahm, Driftwoord
Marvin Allen
LaDonna Saxm, Denton
Amber Lasater, Denton
Manuel Gil, Houston
Tom Seil, San Antonio
Juno Dalnuer, San Antonio
Leslie DeBourg, Dallas
Grady Walker
Ann Jahm, San Antonio
Vernon Sahun, San Antonio
Len Moore, Forth Worth
Bill Avett, Fort Worth
Mauro Esquivel, San Antonio
Alberto Andrews, San Antonio
Norma Salazar
Ruth Henkes
Justo Leija
Harold E. Miller
Wayne Hunter
Charles M. Smith, Austin
Floyd H. Simmons, San Antonio
Michael D. Bennett, San Antonio
Steven Stellner, Forth Worth
Donald Rodriguez, San Antonio
Mark M. Moor
E. Carlos Hernandez, San Antonio
Robin Chandler, Representative Eddie Rodriguez's Office
Natalie Vanek, Thomas Street Clinic, Houston
Mascos Par, Jr., AIDS Coalition of Texas Now
Johnny Spurlock, AIDS Coalition of Texas Now
Roy Green, AIDS Coalition of Texas Now
Pamela Fialchum, AIDS Coalition of Texas Now
Willie R. Cox, AIDS Coalition of Texas Now
John Tuttle, AIDS Coalition of Texas Now
Amie R. Mudry, AIDS Coalition of Texas Now
Adam Hunter, Beaumont

Registered Guests (Continued)

Toby Saucifer, Orange
Tammy Garrison, Cypress
Ray Brown
Tommie Fisher
John Brinkman, Houston
Orlando Norman, Houston
Reachelian Ellison, Houston
Luis Contregras, Houston
Cecilio Perez, Houston
Virginia Gonzalez, Houston
Luciano Lerma
Ada Baiellor, Houston
Dora Ortiz, Houston
Elvira Zepeda, Houston
Jeronima Atras, Houston
Alijondra C. Fuentes, Houston
Alba Calito, Houston
Oris Dugas, Houston
Wilfrido Lucio, Houston
Elizabeth Brown, Houston
Juana, Houston
Terry Ross, Houston
Auguste Waldlon, Houston
Freddie Haynesworth, Houston
Bobby Hunter
Antonyo White, Houston
Marcy Gool, Daniel Powell Clinic
Elaine Dime, University of Houston, PEP
Gabriella Mackin, Representing daughter – Alessandra Mackin
Lou Baum, The World Life Foundation
Karen Batory, Texas Medical Association
Greg Hoke Wueth
Regina Martin, Legislative Budget Board
Dr. Robert Warren, Texas Medical Association and
Children with Special Healthcare Needs Advisory Committee
Colleen Horton, Texas Center for Disease Studies
Sophia Costilla, Texas Children's Hospital
Sylvia Cano Christus Santa Rosa Children's Hospital, Pedi-Oncology/Hematologist
David Kinsey, Health and Human Services Commission
Courtney Hoftman, CAMP
Kathy Caldwell, Montrose Clinic
Ken Malone, The Assistance Fund
Lillie Gilligan, GSK
Eric Brumleve, GSK
Danny Garza

Mr. McCleskey welcomed guests. Also in attendance at the meeting were Nick Curry, M.D., M.P.H., Acting Executive Deputy Commissioner, and other key staff members of the department.

The Texas Board of Health entered into Executive Session concerning the employment of the Executive Deputy Commissioner and Chief Operating Officer at 10:09 a.m. and concluded at 10:27 a.m. No action was taken.

Mr. McCleskey reconvened the meeting at 10:31 a.m., on Thursday, August 7, 2003. Other Board members in attendance were Mr. Raymond Hannigan, Ms. Margo Scholin, and Dr. Mario Anzaldua.

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED NICK CURRY, M.D., M.P.H. AS EXECUTIVE DEPUTY COMMISSIONER AND MR. BEN DELGADO AS CHIEF OPERATING OFFICER.

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY MS. SCHOLIN, THE MINUTES OF THE JUNE 12, 2003 TEXAS BOARD OF HEALTH MEETING WERE APPROVED.

Mr. McCleskey presented a proclamation congratulating the Children with Special Health Care Needs (CSHCN) Division for seventy years of public health service to the people of the State of Texas. Mr. Sam Cooper, Director, CSHCN Division, accepted the proclamation on behalf of men and women who have dedicated themselves to this program to serve families in our state by providing every child the opportunity to develop to their fullest potential. Members of the Children with Special Health Care Needs staff and Advisory Committee were present and recognized for their contributions. *(Attachment I)*

Mr. McCleskey presented a resolution to Ms. Sandy G. Schroder acknowledging her accomplishments and service during her twenty-six -year career with the department. Ms. Schroder has directly served two Deputy Commissioners and five Commissioners during her service to the State of Texas. *(Attachment II)*

Nick Curry, M.D., M.P.H., Executive Deputy Commissioner, reported on behalf of Dr. Eduardo Sanchez, Commissioner, regarding recent activities of the Commissioner and presented the Commissioner's Report. Dr. Sanchez was attending a meeting, with Governor Rick Perry, of the United States/Mexico Border Governor's Association in Chihuahua, Mexico. *(Attachment III)*

Rick Danko, Dr. P.H., Director, Office of Strategic Health Planning, presented an update on the State Strategic Health Partnership. A preliminary agenda and other information were presented for a symposium to be held in Austin on September 24-25, 2003. Each of the twelve workgroups will present findings and recommendations for the achievement of their respective goals to protect and promote public health in Texas. (*Attachment IV*)

Dennis M. Perrotta, Ph.D., CIC, Office of the State Epidemiologist, announced that applications have been submitted for continued funding under the Bioterrorism and Public Health Preparedness Act for both the U.S. Centers for Disease Control and Prevention (CDC) Public Health Preparedness and the Health Resources and Services Administration (HRSA). The total expected funding, including carry-forward from this year to next year, will exceed \$100 million dollars. Dr. Perrotta reported an audit has been conducted by the Inspector General of the U.S. Department of Health and Human Services with a result that obligations and requirements of contracts and agreements have been met. The State Auditor's Office has been conducting an in-depth audit that will continue through next year. The Preparedness Coordinating Committee has been established and members appointed by the Commissioner of Health, as well as the two subcommittees, the Hospital Preparedness Planning Committee and the Bioterrorism Response Committee. Dr. Perrotta also presented an update on advisory committee activities. (*Attachment V*)

Wanda Thompson, Ph.D., Associate Commissioner for Operational Support, presented an update on the Reduction in Force (RIF) that resulted from the development of the agency budget for FY 04 and other legislative mandates. The Commissioner of Health authorized an exception to the RIF Policy, in order to ensure equitable placement opportunities, by managing implementation of the RIF agency-wide instead of within each program or Associateship. An outline of the process, timeline for the implementation of the RIF process and an analysis of the impact to date were given. (*Attachment VI*)

Mr. Mark Scott, Director, Internal Audit, spoke regarding contract monitoring processes. (*Attachment VII*)

Ms. Machel Pharr, Chief Financial Officer, requested approval of staff recommendations in the draft 2003 Fee Review. The General Appropriations Act requires that the Texas Board of Health conduct annual reviews of all fee schedules within its authority to ensure fee rates are set at a level sufficient to cover the full costs of providing service. Staff requested the Board to consider its recommendations that, if accepted, would result in future rulemaking actions by the Board of Health to raise fees. (*Attachment VIII*)

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY MS. SCHOLIN, THE BOARD ACCEPTED STAFF RECOMMENDATIONS TO PURSUE FEE INCREASES IN THE FOLLOWING PROGRAMS: FOOD, DRUG DEVICE AND COSMETIC SALVAGE; HAZARDOUS PRODUCT MANUFACTURING; PESTICIDE APPLICATOR; MIDWIFERY TRAINING; AND MIGRANT LABOR CAMP INSPECTION.

Ms. Machelie Pharr, Chief Financial Officer, requested approval of transfers for Chronic Disease Services, Laboratory and other support services. (*Attachment IX*)

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED THE TRANSFER OF FUNDS AS OUTLINED IN ATTACHMENT B.

Ms. Machelie Pharr, Chief Financial Officer, requested approval of the continuation of the department's programs and services at the FY 2003 level, as adjusted by the 78th Legislature, from September 1, 2003, through the first Board meeting after September 1, 2003. (*Attachment X*)

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED THE CONTINUATION BUDGET PRIOR TO THE ADOPTION OF THE OFFICIAL BUDGET FOR 2004.

Mr. Charlie Creech, Office of Public Health Practice, requested approval of the acceptance of a donation from the mission of the Paso del Norte Health Foundation to effect long term improvements in the health status of the population in the Greater El Paso Region through education and prevention. (*Attachment XI*)

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED THE ACCEPTANCE OF A DONATION OF \$500.00 TO THE PUBLIC HEALTH REGION 9/10 OFFICE FROM THE PASO DEL NORTE HEALTH FOUNDATION.

Mr. Mike Greenberg, Assistant General Counsel, spoke representing the Food and Drug Safety Program and requested approval of the reappointment of Mr. Gilbert Groomer as a member of the Texas Oyster Council. (*Attachment XII*)

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED THE REAPPOINTMENT OF MR. GILBERT GROOMER TO THE TEXAS OYSTER COUNCIL WITH A TERM TO EXPIRE AUGUST 31, 2004.

Ms. Jennifer Smith, Director, Cardiovascular Health and Wellness Program and the Texas Council on CVD and Stroke, requested approval to realign the position of Kate Darnell to extend to 2007 and replace Mr. Bill Cummings as a consumer representative. Approval will reduce the membership by one member to maintain the legislated number of 11 members. (*Attachment XIII*)

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED THE ACCEPTANCE OF THE RESIGNATION OF BILL CUMMINGS, CONSUMER MEMBER REPRESENTATIVE, AND REALIGN KATE DARNELL TO COMPLETE THE TERM OF BILL CUMMINGS TO THE TEXAS COUNCIL ON CVD AND STROKE WITH A TERM TO EXPIRE FEBRUARY 1, 2007.

Sharilyn K. Stanley, M.D., Associate Commissioner, Disease Control and Prevention, requested approval of the emergency adoption of a rule concerning the diphtheria, tetanus, and acellular pertussis (DTaP) immunization requirements for children attending Texas child-care facilities and elementary schools and the approval of a proposed rule concerning the diphtheria, tetanus, and acellular pertussis (DTaP) immunization requirements for children attending Texas child-care facilities and elementary schools. (*Attachment XIV*)

Mr. McCleskey called for discussion and recognized persons to give public comment.

Clift Price, M.D., a pediatrician from Austin representing the Texas Medical Association, Texas Pediatric Society and the Texas Academy of Family Physicians, read a letter into the record signed by Presidents of the three respective organizations represented. Dr. Price spoke in support of the emergency rules concerning immunization requirements. (*Attachment XV*)

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED THE EMERGENCY ADOPTION OF A RULE CONCERNING THE DIPHTHERIA, TETANUS, AND ACELLULAR PERTUSSIS (DTaP) IMMUNIZATION REQUIREMENTS FOR CHILDREN ATTENDING TEXAS CHILD-CARE FACILITIES AND ELEMENTARY SCHOOLS BASED UPON A FINDING OF IMMINENT PERIL TO THE PUBLIC HEALTH, SAFETY, AND WELFARE OF CHILDREN IF REQUIREMENTS ARE NOT ESTABLISHED FOR PERTUSSIS VACCINATION IN ACCORDANCE WITH THE ADVISORY COMMITTEE FOR IMMUNIZATION PRACTICES RECOMMENDATIONS, SAID RULE TO BE EFFECTIVE IMMEDIATELY UPON FILING WITH THE OFFICE OF THE SECRETARY OF STATE, AND THE APPROVAL OF A PROPOSED RULE CONCERNING THE DIPHTHERIA, TETANUS, AND ACELLULAR PERTUSSIS (DTaP) IMMUNIZATION REQUIREMENTS FOR CHILDREN ATTENDING TEXAS CHILD-CARE FACILITIES AND ELEMENTARY SCHOOLS FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY PUBLIC COMMENT PERIOD.

Ms. Jacquelyn McDonald, Director, Office of the Board of Health, requested approval of a proposed repeal of a rule concerning the Osteoporosis Advisory Committee. This committee is no longer needed due to the elimination of funding for the Osteoporosis Prevention Education Program for the FY 2004-2005 Biennium. (*Attachment XVI*)

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED A PROPOSED REPEAL OF A RULE CONCERNING THE OSTEOPOROSIS ADVISORY COMMITTEE FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Ms. Jacquelyn McDonald, Director, Office of the Board of Health, requested approval of a proposed rule concerning the Registered Sanitarian Advisory Committee. The committee has been reviewed and evaluated and it was determined that the committee should continue in existence until September 1, 2007. (*Attachment XVII*)

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED A PROPOSED RULE CONCERNING THE REGISTERED SANITARIAN ADVISORY COMMITTEE FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Ms. Joan Carol Bates, Assistant General Counsel, requested the approval of the proposed rules concerning the clearinghouse for primary care providers seeking collaborative practice. (*Attachment XVIII*)

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED PROPOSED RULES CONCERNING THE CLEARINGHOUSE FOR PRIMARY CARE PROVIDERS SEEKING COLLABORATIVE PRACTICE FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Ms. Peggy Belcher, Grant Coordination Office, Bureau of Budget and Revenue, requested approval of proposed rules concerning the distribution of tobacco settlement proceeds to political subdivisions. (*Attachment XIX*)

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED PROPOSED RULES CONCERNING THE DISTRIBUTION OF TOBACCO SETTLEMENT PROCEEDS TO POLITICAL SUBDIVISIONS FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Ms. Peggy Belcher, Grant Coordination Office, Bureau of Budget and Revenue, requested approval of proposed rules concerning the Community Hospital Capital Improvement Fund. (*Attachment XX*)

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED PROPOSED RULES CONCERNING THE COMMUNITY HOSPITAL CAPITAL IMPROVEMENT FUND FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Jane Mahlow, D.V.M., M.S., Director, Zoonosis Control, requested approval of proposed rules concerning the training of animal shelter personnel. (*Attachment XXI*)

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED PROPOSED RULES CONCERNING THE TRAINING OF ANIMAL SHELTER PERSONNEL FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Jane Mahlow, D.V.M., M.S., Director, Zoonosis Control, requested approval of proposed rules concerning the care of animals by circuses, carnivals, and zoos. (*Attachment XXII*)

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED PROPOSED RULES CONCERNING THE CARE OF ANIMALS BY CIRCUSES, CARNIVALS, AND ZOOS FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Susan Neill, Ph.D., Chief, Bureau of Laboratories, requested approval of proposed rules concerning laboratory services and fees. (*Attachment XXIII*)

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED PROPOSED RULES CONCERNING LABORATORY SERVICES AND FEES FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Mr. Ernest (Skip) Oertli, Chief, Bureau of Epidemiology, requested approval of proposed rules concerning the operations and funding of Poison Control Centers in Texas and the Poison Control Coordinating Committee. The committee has been reviewed and it is recommended that the committee be abolished. (*Attachment XXIV*)

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED PROPOSED RULES CONCERNING THE OPERATIONS AND FUNDING OF POISON CONTROL CENTERS FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Mr. McCleskey announced a recess at 11:59 a.m., on Thursday, August 7, 2003.

Mr. McCleskey reconvened the meeting at 1:00 p.m., on Thursday, August 7, 2003. Other Board members in attendance were Mr. Raymond Hannigan, Ms. Margo Scholin, and Dr. Mario Anzaldua.

Mr. McCleskey called for discussion and recognized Ms. Gabrilla Macken to give public comment. She spoke as a parent of quadruple five-year-old children and the mother of a child with special health care needs. She expressed her concern about the Children With Special Health Care Needs Advisory Committee being abolished. She feels this committee has been a great forum and is essential for parents. She urged the Commissioner of Health and Texas Board of Health to create a group to receive input from parents with children that have special health care needs.

Ms. Elaine Powell, Director, Business Improvement Office, presented an update on the activities of the Business Improvement Office, including a third quarter report ending May 31, 2003, regarding the status of the implementation of the Business Improvement Plan which shows 87 percent recommendations have been implemented. Starting the new fiscal year September 1, 2003, the Rider is no longer in our Appropriations Bill to require a plan and quarterly updates; however, business improvement activities will continue to be tracked and reported. Ms. Powell reported on consolidation of Health and Human Service Commission agency functions and the development of a business improvement reporting process, the role of the Operations Council and its accomplishments, and meetings with the Sunset Office and State Auditor's Office. (*Attachment XXV*)

Mr. C. David Richards, Deputy General Counsel, requested approval of a proposed rule concerning the suspension of license for failure to pay child support. (*Attachment XXVI*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED A PROPOSED RULE CONCERNING THE SUSPENSION OF LICENSE FOR FAILURE TO PAY CHILD SUPPORT FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Mr. Richard A. Ratliff, Chief, Bureau of Radiation Control, requested approval of a proposed rule concerning hearing and enforcement procedures under the Texas Radiation Control Act. (*Attachment XXVII*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED A PROPOSED RULE CONCERNING THE HEARING AND ENFORCEMENT PROCEDURES UNDER THE TEXAS RADIATION CONTROL ACT FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Ms. Paula McKinney, Chief, Hazard Communication Branch, Project Safety Division, requested approval of proposed repeal of rules concerning industrial homework standards. (*Attachment XXVIII*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED THE PROPOSED REPEAL OF RULES CONCERNING INDUSTRIAL HOMEWORK STANDARDS FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Ms. Paula McKinney, Chief, Hazard Communication Branch, Project Safety Division, requested approval of proposed repeal of rules and new rules concerning standards and guidelines for selection and use of face and eye protection in public schools. (*Attachment XXIX*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED THE PROPOSED REPEAL OF RULES AND NEW RULES CONCERNING STANDARDS AND GUIDELINES FOR SELECTION AND USE OF FACE AND EYE PROTECTION IN PUBLIC SCHOOLS FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Ms. Paula McKinney, Chief, Hazard Communication Branch, Project Safety Division, requested approval of proposed repeal of rules and new rules concerning recommended allowable concentrations of toxic gases. (*Attachment XXX*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED THE PROPOSED REPEAL OF RULES AND NEW RULES CONCERNING RECOMMENDED ALLOWABLE CONCENTRATIONS OF TOXIC GASES FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Ms. Cindy Bednar, Director, Hospital Program, Health Facility Licensing and Compliance Division, requested approval of a proposed rule for the adoption by reference of the memorandum of understanding concerning interagency coordination of special education services to students with disabilities in residential facilities. (*Attachment XXXI*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED A PROPOSED RULE CONCERNING THE ADOPTION BY REFERENCE OF A MEMORANDUM OF UNDERSTANDING CONCERNING INTERAGENCY COORDINATION OF SPECIAL EDUCATION SERVICES TO STUDENTS WITH DISABILITIES IN RESIDENTIAL FACILITIES FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Ms. Cindy Bednar, Director, Hospital Program, Health Facility Licensing and Compliance Division, requested approval of a proposed rule for the adoption by reference of the memorandum of understanding concerning individual transition planning for students receiving special education services. (*Attachment XXXII*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED A PROPOSED RULE CONCERNING THE ADOPTION BY REFERENCE OF A MEMORANDUM OF UNDERSTANDING CONCERNING INDIVIDUAL TRANSITION PLANNING FOR STUDENTS RECEIVING SPECIAL EDUCATION SERVICES FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Mr. Mike Minoia, Bureau of Sanitation, requested approval of a proposed rule concerning the prohibition of nudity at youth camps. The rule is being proposed as a measure to protect the safety of campers by decreasing the number of campers who may possibly suffer abuse or exploitation by individuals attracted to youth camps where nudity is not restricted. (*Attachment XXXIII*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED A PROPOSED RULE CONCERNING THE PROHIBITION OF NUDITY AT YOUTH CAMPS FOR PUBLICATION IN THE *TEXAS REGISTER* FOR A 30-DAY COMMENT PERIOD.

Mr. Bob Blackwell, Meat Safety Assurance Division, Bureau of Food and Drug Safety, requested approval of a final rule concerning meat and poultry inspection. (*Attachment XXXIV*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING A RULE CONCERNING MEAT AND POULTRY INSPECTION TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Christine Cordes, Manager, Health Facility Licensing and Compliance, requested approval of final rules concerning the regulation of end stage renal disease facilities. (*Attachment XXXV*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING THE REGULATION OF END STAGE RENAL DISEASE FACILITIES TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Yvonne Feinleib, Program Administrator, Professional Licensing and Certification Division, requested approval of final rules concerning the registration of sanitarians. (*Attachment XXXVI*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING THE REGISTRATION OF SANITARIANS TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Yvonne Feinleib, Program Administrator, Professional Licensing and Certification Division, requested approval of final rules concerning the registration of code enforcement officers. (*Attachment XXXVII*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING THE REGISTRATION OF CODE ENFORCEMENT OFFICERS TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Julie W. Loera, Chief, Training and Evaluation Branch, Manufactured Foods Division, requested approval of final rules concerning seafood Hazard Analysis Critical Control Point.
(Attachment XXXVIII)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING SEAFOOD HAZARD ANALYSIS CRITICAL CONTROL POINT TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Jacquelyn McDonald, Director, Office of the Board of Health, requested approval of a final rule concerning the Texas Radiation Advisory Board. The board has been reviewed and evaluated and it was determined that the board should continue in existence until September 1, 2007.
(Attachment XXXIX)

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED AN ORDER ADOPTING A RULE CONCERNING THE TEXAS RADIATION ADVISORY BOARD TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Jacquelyn McDonald, Director, Office of the Board of Health, requested approval of a final rule concerning the Asbestos Advisory Committee. The committee has been reviewed and evaluated and it was determined that the committee should continue in existence until September 1, 2007.
(Attachment XL)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING A RULE CONCERNING THE ASBESTOS ADVISORY COMMITTEE TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Jacquelyn McDonald, Director, Office of the Board of Health, requested approval of a final rule concerning the Device Distributors and Manufacturers Advisory Committee. The committee has been reviewed and evaluated and it was determined that the committee should continue in existence until September 1, 2007. (*Attachment XLI*)

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED AN ORDER ADOPTING A RULE CONCERNING THE DEVICE DISTRIBUTORS AND MANUFACTURERS ADVISORY COMMITTEE TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Jacquelyn McDonald, Director, Office of the Board of Health, requested approval of a final repeal of a rule concerning the Prostate Cancer Advisory Committee. The committee has been reviewed and evaluated and it was determined that the committee should now be abolished and that the work of the committee may be continued in the form of ad hoc workgroups to be called upon as appropriate to make recommendations to the department regarding prostate cancer education. (*Attachment XLII*)

ON A MOTION MADE BY MS. SCHOLIN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING THE REPEAL OF A RULE CONCERNING THE PROSTATE CANCER ADVISORY COMMITTEE TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Ms. Jacquelyn McDonald, Director, Office of the Board of Health, requested approval of a final repeal of a rule concerning the Wholesale Drug Distributors Advisory Committee. The committee has been reviewed and evaluated and it was determined that the committee should now be abolished. Issues relating to the type of advice previously provided by the committee are better addressed through the establishment of ad hoc workgroups. (*Attachment XLIII*)

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED AN ORDER ADOPTING THE REPEAL OF A RULE CONCERNING THE WHOLESALE DRUG DISTRIBUTORS ADVISORY COMMITTEE TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Mr. C. David Richards, Deputy General Counsel, requested approval of a final rule concerning a memorandum of understanding for long term care services for the elderly. (*Attachment XLIV*)

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED AN ORDER ADOPTING A RULE CONCERNING A MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT AND THE TEXAS DEPARTMENT ON AGING, THE TEXAS DEPARTMENT OF HUMAN SERVICES AND THE TEXAS MENTAL HEALTH AND MENTAL RETARDATION FOR LONG TERM CARE SERVICES FOR THE ELDERLY TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Mr. C. David Richards, Deputy General Counsel, requested approval of a final rule concerning a memorandum of understanding for elderly abuse. (*Attachment XLV*)

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING A RULE CONCERNING A MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT AND THE DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES FOR ELDERLY ABUSE TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Jane Mahlow, D.V.M., M.S., Director, Zoonosis Control, requested approval of final rules concerning the provision of anti-rabies biologicals. (*Attachment XLVI*)

ON A MOTION MADE BY MR. HANNIGAN AND SECONDED BY DR. ANZALDUA, THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING THE PROVISION OF ANTI-RABIES BIOLOGICALS TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Mr. Mike Montgomery, Chief, Bureau of Nutrition Services, requested approval of final rules concerning vendors participating in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). (*Attachment XLVII*)

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING THE SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC) TO BE EFFECTIVE OCTOBER 1, 2003, AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Mark Canfield, Ph.D., Director, Texas Birth Defects Monitoring Division, requested approval of final rules concerning surveillance and control of birth defects. (*Attachment XLVIII*)

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING SURVEILLANCE AND CONTROL OF BIRTH DEFECTS TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Linda Althenhoff, D.D.S., Director, Texas Health Steps/Medical Transportation, requested approval, subject to the approval of the State Medicaid Director, of the final adoption of rules concerning the department's Texas Health Steps (THSteps) medical services program. (*Attachment XLIX*)

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MS. SCHOLIN, THE BOARD APPROVED AN ORDER ADOPTING RULES, SUBJECT TO THE APPROVAL OF THE STATE MEDICAID DIRECTOR, CONCERNING THE DEPARTMENT'S TEXAS HEALTH STEPS MEDICAL SERVICES PROGRAM TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Mr. McCleskey announced a recess at 1:47 p.m., on Thursday, August 7, 2003.

Mr. McCleskey reconvened the meeting at 3:00 p.m., on Thursday, August 7, 2003. Other Board members in attendance were Mr. Raymond Hannigan, Ms. Margo Scholin, and Dr. Mario Anzaldua.

Sharilyn K. Stanley, M.D., Associate Commissioner, Disease Control and Prevention, requested approval of final rules concerning the Texas HIV Medication Program. Enforcement of these rules benefit the public and the department by ensuring the program continues to operate within budget parameters thus ensuring the continuation of pharmaceutical assistance to low income clients living with HIV disease. (*Attachment L*)

A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MR. HANNIGAN TO APPROVE AN ORDER ADOPTING RULES CONCERNING THE TEXAS HIV MEDICATION PROGRAM TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

Mr. McCleskey called for discussion and recognized persons to give public comment.

Mr. William Griffin, East Texas Regional Coordinator for Act Now of Houston, spoke regarding a letter submitted for the record from Act Now that outlines concerns, in order of importance, regarding the Texas HIV Medication Program rules. (*Attachment LI*)

Mr. Randall Lamberson, Act Now of Amarillo, reported that on March 26, 2003, over three hundred citizens visited the Capitol to request additional monies for the Texas HIV Medication Program (THMP). As a result, the Texas Legislature has awarded THMP the single largest state appropriation for an aids drug assistance program ever in the United States and this is despite the fact that Texas is in a \$10 Billion budget deficit.

Mr. Tracy Wilson, State Coordinator for Act Now, thanked the Texas Board of Health and staff on behalf of all the members of Act Now for accommodating them to speak. Charts were submitted for the record that show appropriations and projected expenses that indicate a surplus of over \$6 Million dollars in the THMP over the next two years. (*Attachment LI*)

Mr. Daniel (Danny) Garza, Act Now Regional Coordinator for the Valley Area, stated Act Now is not against TDH having the proper tools to manage the program. He requested they be informed before the tools are being used so together they can create policies that help everyone.

Mr. Steve DeCorte, Act Now, spoke regarding recertification and requested the word “periodically” be replaced with “annually” in the rules.

Mr. Lorenzo Sias, Act Now of El Paso, requested a position be created in the Bureau of HIV and STD Prevention that would serve as an analyst that can provide consistent information on appropriations and expenditures on a regular basis.

Mr. Maurice Evans, Act Now Coordinator for Tyler, spoke regarding the proposed cost containments submitted by Act Now and requested taking prophylactic drugs off of the list of drugs to save \$7 Million dollars over about a two year period making it possible for another 700 clients to enroll in the program.

Mr. Roger Culberson, Act Now Panhandle Regional Coordinator, spoke regarding cost containment measures that relates to the medical criteria that meets the Federal Department of Health and Human Services guidelines for the use of anti-viral agents in HIV infected adults and adolescents.

Mr. Carlos Hernandez, Act Now Regional Coordinator for West Texas, stated new clients should have a waiting list in order for this option to be fair and equitable.

Mr. Tony Graves, Act Now Coordinator for Lubbock, stated Act Now has surveyed 400 members, conducted community forums and focus groups across the state to find out community thoughts of the proposed rules changes to the THMP. They have expressed a willingness to pay co-pays to obtain the medications even though TDH is no longer considering this option. He stated HIV positive Texans would like to go on record stating that we would be willing to do our part to ensure continual access for all to the THMP.

Mr. Bruce Adams, Act Now from El Paso, addressed the Federal Poverty Guidelines and stated the Act Now survey showed more people would go back to work if they could afford to, but not at the new rate of 125 percent, which is about \$11,000 per year.

Mr. Sterling Mulings, Act Now in Houston, spoke against the proposal to eliminate the income guideline spend-down and reduce the poverty level to 125 percent. He stated the taxpayers are paying for his medication and his disability, but he is afraid to go back to work because of the proposals.

Ms. Debra Goodie, stated she needs the medicine to live and asked that it not be taken away from her and others.

Mr. Rickie Martin, Act Now Houston Chapter, expressed concern that they are being put in a position where they can no longer be a functioning member of society and cannot thrive if they are scared to go to work.

Mr. Issac Henry, a member of Coalition of Life, Act Now of Dallas and Aids Services of Dallas, stated his concerns that medications might be taken away from them and some people will not be able to afford the co-payments if required.

Mr. Thomas Brenson, Dallas, spoke regarding his concerns with the Social Security Administration's Medicare program.

Mr. Jimmy Franks, a member of Act Now and World-Wide Mission, expressed concerns regarding the United States assisting other countries and not taking care of its own.

Ms. Pamela Curry, Regional Coordinator for AIDS Coalition Now in Dallas, addressed the elimination of spend-down as a cost containment measure. She stated this will only serve to eliminate the incentive for people to return to work.

Ms. Lozareo Lopez, Act Now in San Antonio, thanked the department for this program. She stated her husband passed away because of AIDS and she doesn't want to die because she cannot afford the medication.

Ms. Joyce Waters, stated eight years ago she lost her youngest child to AIDS because medications were not available and no one should lose a child or loved one because they have no money for medications.

Mr. Larry Diaz, a member of Act Now in San Antonio and Co-Chair of the Title I Planning Council, commended the department on the work they have been doing to benefit a lot of people. He stated the proposed rule changes and the proposed changes from ACT Now are not in opposition and can be combined as a workable package. He asked the department to continue to listen to their proposals because history has shown that people with HIV have the best perspective when it comes to how to take care of themselves.

Ms. Mary Ellen Featherstone, Act Now of Houston, spoke as a mother of a son who, without his medications, would not have the quality of life that he now has.

Ms. Linda Wilson, Mother of Tracy Wilson, State Coordinator for Act Now, expressed her concerns about her son's life and others lives that will be affected if denied access to medications they need to stay alive.

Mr. Tom Sheffield, served as the Founding Chair of the Austin Area Comprehensive HIV Planning Council (the Local Title I and Title II Planning Body), a former member of AIDS Services of Austin, and has worked for Dr. Eduardo Sanchez as the HIV City Coordinator for the City of Austin. He stated he has complete trust and faith in the department's desire to do what is in the best interest of the state. He encouraged the support of all of Act Now recommendations.

Mr. McCleskey announced a recess at 4:00 p.m., on Thursday, August 7, 2003.

Mr. McCleskey reconvened the meeting at 4:15 p.m., on Thursday, August 7, 2003. Other Board members in attendance were Mr. Raymond Hannigan, Ms. Margo Scholin, and Dr. Mario Anzaldua.

ON A MOTION MADE BY DR. ANZALDUA AND SECONDED BY MR. HANNIGAN, THE BOARD APPROVED AN AMENDMENT TO THE PROPOSED RULES CONCERNING THE TEXAS HIV MEDICATION PROGRAM TO CHANGE THE WORDING IN §98.109 (c) FROM “MAY PERIODICALLY” TO “SHALL ANNUALLY.”

THE BOARD APPROVED AN ORDER ADOPTING RULES CONCERNING THE TEXAS HIV MEDICATION PROGRAM TO BE EFFECTIVE 20 DAYS AFTER FILING WITH THE TEXAS REGISTER DIVISION, OFFICE OF THE SECRETARY OF STATE.

There were no additional public comments.

Mr. McCleskey announced the next meeting of the Texas Board of Health will be held on Thursday, September 18, 2003, in Austin, at 10:00 a.m.

The meeting was adjourned on Thursday, August 7, 2003, at 4:27 p.m.

APPROVED: September 19, 2003

George H. McCleskey, Chair
Texas Board of Health

Date